IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 06.07.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
And
The Hon'ble Mr. Justice V.DHANAPALAN

Writ Appeal No.1210 of 2001
and
WAMP Nos.11157 of 2001 & 4960 of 2002

Danakoti Ammal … Appellant

Vs.

1. The Special Commissioner
and Commissioner of Land Admn.,
Ezhilagam, Chennai-5.

2. District Collector, Trichy.

3. District Revenue Officer,
Collector's Office, Trichy.

4. R.D.O. Musiri Taluk,
Trichy Dist.

5. Tahsildar, Tiraiyur Taluk,
Trichy District.

6. Subbiah Achari (died)
7. Dhanabakkiyam
8. Pattu
9. Lakshmi
10. Shanmugham
11. Manickkam
12. Paramasivam
13. Ulaganathan
14. Malliga
15. Sankaran
16. Parameaswari

R-7 to R16 brought on record as
LRs of deceased R-6 as per order
of Court dt.17.04.2003 made in
WAMP No.730/03. … Respondents

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Appeal under Clause 15 of the Letters Patent against the order of the learned single Judge dated 05.03.2001 made in WP No.18693 of 1993.

For Appellant : Mrs.Chitra Sampath
For R-1 to R-5 : Mr.M.Dhandapani,
Addl. Government Pleader.
For R-7 to R-16 :Mr.M.Balasubramanian.

J U D G M E N T

P.SATHASIVAM, J.

Aggrieved by the order of the learned single Judge, dated 05.03.2001, made in W.P. No.18693 of 1993, Dhanakoti Ammal, ie., writ petitioner, has preferred this Writ Appeal.

2. Heard learned counsel appearing on either side.

3. According to the appellant, she became the owner of an extent of 4.96 Acres in S. No.128/1 and 128/5 in Ookkarai village, Thoraiyur Taluk. Originally, S. Nos.128/2 to 128/5 were assigned to four persons showing a total extent of 9.45 acres. After resurvey, which became final in 1969, the assignees were found to be entitled only to a lesser extent as per the actual possession on land. Thereafter, an extent of 4.96 acres comprised in Survey No.128/1 was assigned to the writ petitioner/appellant in 1971 and she obtained patta in her name. However, the assignees of S. Nos.128/2 to 128/4 started disturbing the petitioner's possession of her land in S. Nos.128/1 and 128/5, hence, she filed a suit in O.S. No.614 of 1979 on the file of the Subordinate Court, Trichy, for declaration of her title and injunction. The said suit was decreed on 29.11.1980. The assignees of S. Nos.128/2 to 128/4, viz., defendants in the said suit, filed A.S. No.39 of 1982 on the file of the District Court, Trichy, and the same was dismissed on 27.1.1983. Thereafter, they filed Second Appeal No.436 of 1983 before this Court. By Judgment dated 31.3.1998, the Judgments of the lower courts came to be confirmed.

4. Pending Second Appeal, the 6th respondent herein, who is the assignee of Survey No.128/2, gave a representation to the first respondent/the Special Commissioner & Commissioner of Land Administration, Ezhilagam, Chennai-5, on 6.11.1993, questioning the assignment made in favour of the petitioner/appellant. The petitioner submitted her objections, enclosing all the relevant particulars, however, the Revenue Authorities, by concluding that there was excess assignment, cancelled the patta issued in her favour. The assignment in favour of the 6th respondent and other assignees was also cancelled as they did not cultivate their lands.

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5. The petitioner/appellant, aggrieved by the same, filed Writ Petition before this Court, questioning the order of the first respondent. The 6th respondent got him impleaded in the Writ Petition. The learned Judge, while confirming the order of the first respondent, directed the 4th respondent viz., Revenue Divisional Officer, Musiri Taluk, Trichy District, to hear all the parties and treat the representation of the 6th respondent, dated 6.11.1993, as an Appeal under the Board Standing Order. Questioning the said Order, the writ petitioner has filed the above Appeal.

6. Learned counsel appearing for the appellant, by taking us through various civil proceedings, submitted that, in the absence of specific challenge by the 6th respondent in respect of the assignment dated 28.6.1971, the learned Judge has committed an error in directing the 4th respondent to consider the representation of the 6rth respondent dated 6.11.1993 as an appeal under the Board Standing Order. On the other hand, learned Additional Government Pleader as well as the counsel appearing for the contesting respondents defended the order of the learned Judge.

7. In the light of the submission made, we verified the orders relating to assignment; orders of the lower courts; proceedings of the Revenue Authorities, holding that the parities are having excess assignment; and the order of the learned Judge, issuing directions as stated above. Having verified all the materials, we are of the view that it is for the prescribed authority to deal with the question relating to the validity of the assignment which has been made under the relevant Board Standing Orders. Irrespective of the fact that the petitioner/appellant secured various orders; considering the fact that the representation of the sixth respondent dated 6.11.1993 was pending, we are of the view that the learned Judge is perfectly right in directing the fourth respondent to deal with the case of both parties and take a decision one way or other in accordance with the Board Standing orders. Further, the learned Judge also permitted the Writ petitioner/appellant as well as the 6th respondent (now his LRs R-7 to R-16 in this Appeal) and other assignees to make representation in writing and to place all the materials available with them in order to substantiate their respective claims before the fourth respondent. Learned Judge directed the 4th respondent to afford reasonable opportunity of hearing to all the parties concerned. It is also pertinent to note that, having regard to the fact that the writ petitioner/appellant succeeded in the Civil Court by getting decree, which has been confirmed in S.A. No.436 of 1986; the learned Judge protected her possession till conclusion of the proceedings before the fourth respondent.

8. We are in entire agreement with the said conclusion. We are also satisfied that by the said order, the learned Judge protected the interest of all including the petitioner/appellant. He also provided further opportunities to put forth their respective cases. In such circumstances, we do not find any valid reason for interference.

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9. Under these circumstances, Writ Appeal fails and the same is dismissed. No costs. In view of disposal of the main Appeal, the Miscellaneous Petitions are closed. Fourth respondent viz., Revenue Divisional Officer, Musiri Taluk, Trichy District, is directed to complete the enquiry and pass orders as observed by the learned single Judge in para No.7 of his Order dated 05.03.2001 in W.P. No.18693 of 1993 within a period of six months from the date of receipt of copy of this Judgment.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

JI.

To

1. The Special Commissioner
and Commissioner of Land Admn.,
Ezhilagam, Chennai-5.

2. District Collector, Trichy.

3. District Revenue Officer,
Collector;s Office,Trichy.

4. R.D.O., Musiri Taluk,
Trichy Dist.

5. Tahsildar, Tiraiyur Taluk,
Trichy District.

+ 2 CCs to M/s.Chitra Sampath, Advocate SR NO 29063, 28902

+ 1 CC To Mr. M.Balasubramanian, Advocate SR NO. 28960

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